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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 MALINDA K. R.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL  
12 SECURITY

13 Defendant.

CASE NO. 3:19-CV-05310-DWC

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

14 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of  
15 Defendant's denial of Plaintiff's applications for disability insurance benefits ("DIB"). Pursuant  
16 to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties  
17 have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 3.

18 After considering the record, the Court concludes the Administrative Law Judge ("ALJ")  
19 erred when she failed to properly consider the opinions of Doctors Keri Tarantino, Matthew  
20 Comrie, and Rita Flanagan. Dkt. 9, p. 1, 3-6. Had the ALJ properly considered these doctors'  
21 opinions, the ALJ may have found Plaintiff had additional severe impairments at Step Two of the  
22 sequential evaluation process and Plaintiff's residual functional capacity ("RFC") may have  
23 included additional limitations. The ALJ's error is therefore harmful, and this matter is reversed  
24

ORDER REVERSING AND REMANDING  
DEFENDANT'S DECISION TO DENY BENEFITS

1 and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of Social  
2 Security (“Commissioner”) for further proceedings consistent with this Order.

### 3 FACTUAL AND PROCEDURAL HISTORY

4 On November 6, 2015, Plaintiff filed an application for DIB, alleging disability as of  
5 September 10, 2015. *See* Dkt. 7, Administrative Record (“AR”) 15, 17. The application was  
6 denied upon initial administrative review and on reconsideration. *See* AR 15. A hearing was held  
7 before ALJ Marilyn S. Mauer on October 11, 2017. AR 30-64. In a decision dated April 5, 2018,  
8 the ALJ determined Plaintiff to be not disabled. AR 15-25. Plaintiff’s request for review of the  
9 ALJ’s decision was denied by the Appeals Council, making the ALJ’s decision the final decision  
10 of the Commissioner. *See* AR 1-6; 20 C.F.R. § 404.981, § 416.1481.

11 In the Opening Brief, Plaintiff maintains the ALJ erred by failing to find Plaintiff  
12 suffered from a severe mental impairment at Step Two of the sequential evaluation process. Dkt.  
13 9, p. 1. Specifically, Plaintiff alleges the ALJ improperly discounted the medical opinions of Drs.  
14 Tarantino, Comrie, and Flanagan. Dkt. 9, p. 1, 3-6.

### 15 STANDARD OF REVIEW

16 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of  
17 social security benefits if the ALJ’s findings are based on legal error or not supported by  
18 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
19 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

### 20 DISCUSSION

#### 21 **I. Whether the ALJ erred in finding Plaintiff’s mental impairment was not** 22 **severe at Step Two of the sequential evaluation.**

23 Plaintiff maintains the ALJ erred by failing to find Plaintiff suffered from a severe mental  
24 impairment at Step Two of the sequential evaluation process. Dkt. 9, p. 1. Specifically, Plaintiff

1 alleges the ALJ's finding at Step Two is inconsistent with the medical opinions of Drs.  
2 Tarantino, Comrie, and Flanagan. *Id.* at pp. 2-6. Plaintiff essentially contends the ALJ's  
3 consideration of three medical opinions resulted in an error at Step Two. *See* Dkt. 6. Therefore,  
4 the Court analyzes whether the ALJ properly considered the medical opinions of Drs. Tarantino,  
5 Comrie, and Flanagan.

6 A. Dr. Tarantino

7 Plaintiff contends the ALJ improperly rejected Dr. Tarantino's opinion.

8 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted  
9 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
10 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d  
11 502, 506 (9th Cir. 1990)). When a treating or examining physician's opinion is contradicted, the  
12 opinion can be rejected "for specific and legitimate reasons that are supported by substantial  
13 evidence in the record." *Lester*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035,  
14 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can  
15 accomplish this by "setting out a detailed and thorough summary of the facts and conflicting  
16 clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157  
17 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

18 On June 24, 2016, Dr. Tarantino, a consulting Doctor of Psychology, completed a Mental  
19 Evaluation of Plaintiff. AR 407-411. After Dr. Tarantino conducted a clinical interview and a  
20 mental status exam ("MSE"), he diagnosed Plaintiff with Chronic Posttraumatic Stress Disorder  
21 and an Unspecified Depressive Disorder. *Id.* Dr. Tarantino opined: Plaintiff's remote memory  
22 was mildly impaired; her ability to interact with coworkers and the public was likely moderately  
23 impaired due to her symptoms; her ability to maintain regular attendance and complete a normal  
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1 | workday without interruption from psychologically based symptoms was moderately impaired;  
2 | and her ability to deal with the usual stress encountered in the workplace where others are around  
3 | was markedly impaired. AR 411.

4 |         The ALJ gave little weight to Dr. Tarantino's opinion that Plaintiff has the limitations  
5 | listed above, because:

6 |         (1) Her opinion was based on a one-time examination. (2) The claimant told Dr.  
7 |         Tarantino that she was on medication to manage her moods and around the time of  
8 |         that exam, her treating records show a prescription for Alprazolam, but she  
9 |         apparently stopped taking that. She was briefly treated with Lexapro for postpartum  
10 |         depression but that therapy was successful and she no longer takes her medication.  
11 |         (3) Furthermore, Dr. Tarantino's opinion on social functioning appears to be  
12 |         exclusively based on the claimant's subjective reports, which are not otherwise  
13 |         consistent with the record and the claimant's testimony about her social activities.

14 |         AR 22 (numbering added).

15 |         First, the ALJ discounted Dr. Tarantino's opinion because it was based on a one-time  
16 |         examination. An examining doctor, by definition, does not have a treating relationship with a  
17 |         claimant and usually only examines the claimant one time. *See* 20 C.F.R. § 404.1527. "When  
18 |         considering an examining physician's opinion . . . it is the quality, not the quantity of the  
19 |         examination that is important. Discrediting an opinion because the examining doctor only saw  
20 |         claimant one time would effectively discredit most, if not all, examining doctor opinions."  
21 |         *Yeakey v. Colvin*, 2014 WL 3767410 at \*6 (W.D. Wash. July 31, 2014). Therefore, the ALJ  
22 |         improperly rejected Dr. Tarantino's opinion because it was based on a one-time examination.

23 |         Second, while unclear, the ALJ appears to discount Dr. Tarantino's opinion because  
24 |         Plaintiff no longer takes psychiatric medications. AR 22. The ALJ's finding is conclusory. The  
25 |         ALJ fails to cite to any records indicating Plaintiff was not taking psychiatric medications when  
26 |         she was examined by Dr. Tarantino. *See* AR 22. Further, the ALJ does not explain how  
27 |         Plaintiff's failure to continue taking her psychiatric medications discounts Dr. Tarantino's

1 opinion. Without adequate discussion explaining why Plaintiff's cessation of psychiatric  
2 medications discounts Dr. Tarantino's opinion, the ALJ's second reason for giving little weight  
3 to Dr. Tarantino's opinion is not specific and legitimate and supported by substantial evidence.  
4 *See Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set forth the  
5 reasoning behind its decisions in a way that allows for meaningful review"); *Regennitter v.*  
6 *Commissioner of Social Security Administration*, 166 F.3d 1294 (9th Cir.1999) (quoting  
7 *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th Cir.1989)) ("it is a questionable practice to  
8 chastise one with a mental impairment for the exercise of poor judgment in seeking  
9 rehabilitation"); *see also Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) ("... ALJs must not  
10 succumb to the temptation to play doctor and make their own independent medical findings").

11 Third, the ALJ discounted Dr. Tarantino's opinion as to Plaintiff's social functioning  
12 because Dr. Tarantino based her findings "exclusively" on Plaintiff's subjective reports. AR 22.  
13 An ALJ may reject a physician's opinion "if it is based 'to a large extent' on a claimant's self-  
14 reports that have been properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035,  
15 1041 (9th Cir. 2008) (quoting *Morgan v. Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.  
16 1999)). This situation is distinguishable from one in which the doctor provides her own  
17 observations in support of her assessments and opinions. *See Ryan v. Comm'r of Soc. Sec.*  
18 *Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). "[W]hen an opinion is not more heavily  
19 based on a patient's self-reports than on clinical observations, there is no evidentiary basis for  
20 rejecting the opinion." *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan*, 528  
21 F.3d at 1199-1200). Notably, a psychiatrist's clinical interview and MSE are "objective  
22 measures" which "cannot be discounted as a self-report." *See Buck v. Berryhill*, 869 F.3d 1040,  
23 1049 (9th Cir. 2017).

1 In *Buck*, the Ninth Circuit noted “[p]sychiatric evaluations may appear subjective,  
2 especially compared to evaluation in other medical fields.” 869 F.3d at 1049. “Diagnoses will  
3 always depend in part on the patient’s self-report, as well as on the clinician’s observations of the  
4 patient. But such is the nature of psychiatry. Thus, the rule allowing an ALJ to reject opinions  
5 based on self-reports does not apply in the same manner to opinions regarding mental illness.”  
6 *Id.* (internal citations omitted).

7 Here, the record does not show Dr. Tarantino relied more heavily on Plaintiff’s subjective  
8 testimony more than on other information and her own observations. *See* AR 407-411. The  
9 record shows Dr. Tarantino observed Plaintiff and conducted an MSE and clinical interview in  
10 reaching her opinion. *See* AR 407-411. Dr. Tarantino did not discredit Plaintiff’s subjective  
11 reports and supported her opinion with findings based on the MSE and clinical review of  
12 Plaintiff. Merely questioning the credibility of Plaintiff’s complaints to Dr. Tarantino is not a  
13 clear and convincing reason to reject Dr. Tarantino’s opinion.

14 Further, the ALJ references that Plaintiff’s subjective reports to Dr. Tarantino “are not  
15 otherwise consistent with the record and the claimant’s testimony about her social activities.” AR  
16 22. But, the ALJ fails to provide any citations to the record or Plaintiff’s social activities which  
17 are inconsistent with her reports to Dr. Tarantino. Therefore, the ALJ’s conclusory finding is not  
18 sufficient to discount Dr. Tarantino’s opinion as being exclusively based on Plaintiff’s self-  
19 reports. *See Embrey*, 849 F.2d at 421-22 (conclusory reasons do “not achieve the level of  
20 specificity” required to justify an ALJ’s rejection of an opinion). Thus, the ALJ erred when she  
21 rejected Dr. Tarantino’s opinion regarding Plaintiff’s social functioning for being based on  
22 Plaintiff’s subjective testimony.

1 For the reasons above, the Court finds the ALJ's three reasons for discounting Dr.  
2 Tarantino's opinion are not specific and legitimate and supported by substantial evidence.  
3 Therefore, the ALJ erred.

4 B. Doctors Comrie and Flanagan

5 Plaintiff contends the ALJ erred in rejecting the medical opinions of state agency  
6 physicians Comrie and Flanagan. Dkt. 9, p. 3.

7 In June 2016, Dr. Comrie, a state agency medical evaluator, reviewed the medical  
8 evidence of record and performed a consultative examination of Plaintiff. AR 66-80. In August  
9 2016, Dr. Flanagan, a state agency psychological evaluator, affirmed Dr. Comrie's opinion. AR  
10 82-96. Although they ultimately found Plaintiff to be not disabled, the doctors concluded  
11 Plaintiff's anxiety and affective disorders were severe at Step Two. AR 72, 88.

12 The ALJ gave the opinion of Drs. Comrie and Flanagan little weight, because:

13 (1) They relied on a one-time consultative examination. (2) The claimant's  
14 description of her activates [sic] with her mom and ability to care for her children  
15 exceeds the limits on social interaction opined by the medical advisors. (3) Their  
16 proffered social limitations are also inconsistent with the opinion of the claimant's  
17 treating physician, Dr. Espanol.

18 AR 23 (numbering added).

19 First, the ALJ discounted the opinion of Drs. Comrie and Flanagan because their findings  
20 were based on a one-time examination, the same reason the ALJ gave for discounting Dr.  
21 Tarantino's opinion. *See* Section I, *supra*; AR 22. As discussed above, discounting a doctor's  
22 opinion because it was based on a one-time consultation is not legitimate. *See Yeakey*, WL  
23 3767410 at \*6. Therefore, the ALJ's first reason for discounting Drs. Comrie and Flanagan is  
24 invalid.

1 Second, the ALJ discounted Drs. Comrie and Flanagan opinion because Plaintiff's  
2 description of her activities exceeds their opined limits on social interaction. The ALJ's finding  
3 is conclusory. The ALJ fails to cite to any records which indicate Plaintiff's description of her  
4 activities are inconsistent with the limits on social interaction opined by Drs. Comrie and  
5 Flanagan. *See* AR 23. Further, the ALJ does not explain how Plaintiff's description of her  
6 activities exceeds the limits which they outlined. Without adequate discussion explaining why  
7 Plaintiff's description of her activities is at odds with the findings of Drs. Comrie and Flanagan,  
8 the Court finds the ALJ's second reason for giving little weight to the opinion of Drs. Comrie  
9 and Flanagan is not specific and legitimate and supported by substantial evidence. *See Brown-*  
10 *Hunter*, 806 F.3d 487 at 492.

11 Third, the ALJ discounted their opinion because it is inconsistent with Dr. Eddie  
12 Espanol's opinion. The ALJ's finding is conclusory. The ALJ fails to cite to any records which  
13 indicate Dr. Espanol's opinion is inconsistent with the opinion of Drs. Comrie and Flanagan. *See*  
14 AR 23. Further, the ALJ does not explain how the opinions differ; she merely states they are  
15 inconsistent. Thus, the ALJ's third reason for giving little weight to the opinion of Drs. Comrie  
16 and Flanagan is not specific and legitimate and supported by substantial evidence. *See Brown-*  
17 *Hunter*, 806 F.3d 487 at 492.

18 For the above stated reasons, the Court finds the ALJ erred in giving little weight to the  
19 opinions of Drs. Comrie and Flanagan.

20 C. Harmless Error

21 Harmless error principles apply in the Social Security context. *Molina v. Astrue*, 674 F.3d  
22 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the  
23 claimant or "inconsequential" to the ALJ's "ultimate nondisability determination." *Stout v.*  
24



1 | *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674  
2 | F.3d at 1115. The determination as to whether an error is harmless requires a “case-specific  
3 | application of judgment” by the reviewing court, based on an examination of the record made  
4 | “‘without regard to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at  
5 | 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. § 2111)).

6 | Plaintiff argues that, because the ALJ erred in considering the medical opinion evidence,  
7 | the ALJ failed to properly consider Plaintiff’s severe impairments at Step Two and failed to  
8 | properly consider all Plaintiff’s limitations in the RFC assessment. *See* Dkt. 9. At Step Two, the  
9 | ALJ found Plaintiff had the following severe impairments: “myotonia congenita (a form of  
10 | muscular dystrophy), fibromyalgia, carpal tunnel syndrome, and restless leg syndrome[.]” AR  
11 | 17. The ALJ did not find Plaintiff suffered from any severe mental impairments. *See* AR 17-18.  
12 | Dr. Tarantino diagnosed Plaintiff with post-traumatic stress disorder and an unspecified  
13 | depressive disorder. AR 411. Drs. Comrie and Flanagan found Plaintiff had severe mental  
14 | impairments of anxiety disorders and affective disorders. *See* AR 72. All three doctors found  
15 | Plaintiff has functional limitations as a result of her mental impairments. Thus, the record shows  
16 | Plaintiff suffers from severe mental impairments. *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th  
17 | Cir. 1996) (quotations omitted) (“An impairment or combination of impairments can be found  
18 | ‘not severe’ only if the evidence establishes a slight abnormality having no more than a minimal  
19 | effect on an individual[’]s ability to work.”).

20 | Furthermore, had the ALJ properly considered the opinions of Drs. Tarantino, Comrie,  
21 | and Flanagan, the ALJ may have included additional limitations in the RFC. For example, Dr.  
22 | Tarantino opined Plaintiff’s ability to maintain regular attendance in the workplace is moderately  
23 | impaired. AR 411. Drs. Comrie and Flanagan determined Plaintiff can have only incidental  
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1 interactions with the public and co-workers. AR 77. The RFC does not account for any  
2 absenteeism, nor does the RFC contain any restrictions regarding Plaintiff's ability to interact  
3 with others. *See* AR 19. If the opinions of Drs. Tarantino, Comrie, and Flanagan were given  
4 great weight, additional limitations would be included in the RFC and in the hypothetical  
5 questions posed to the vocational expert. Thus, the ultimate disability determination may have  
6 changed.

7 The ALJ's failure to properly consider the opinions of Drs. Tarantino, Comrie, and  
8 Flanagan and Plaintiff's mental health impairments at Step Two and throughout the remaining  
9 sequential evaluation process affects the ultimate disability decision. Accordingly, the ALJ's  
10 errors are not harmless and require reversal.

11 On remand, the ALJ is directed to reconsider Step Two, including Plaintiff's mental  
12 impairments, and the remaining steps of the sequential evaluation process.

### 13 CONCLUSION

14 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded  
15 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is reversed and  
16 this matter is remanded for further administrative proceedings in accordance with the findings  
17 contained herein. The Clerk is directed to enter judgment for Plaintiff and close the case.

18 Dated this 7th day of October, 2019.

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21 David W. Christel  
22 United States Magistrate Judge  
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